(3)

NUMBER 91-393

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

L. MICHAEL MAJESKE
PETITIONER

VERSUS

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The petitioner has been pursuing with "DUE DILIGENCE" a just promotion for more than two decades. Due to the vindictiveness of former President Arthur Banks of Greater Hartford Community College the petitioner has illegally been denied such promotion. The respondent-defendant Board of Trustees for Regional Community Colleges has endorsed Banks' illegal actions and continues to do so even though Banks has been retired for 5 years. It continues to deny the petitioner his just promotions. It is to the advantage of the Board of Trustees to continue their cover-up of its past improper actions.

To date no fair and open hearing of the petitioner's grievance has yet been held and not a single issue has been decided in a Court of Law based on its merits. The respondent appears intent that he will do all in his power to prevent an open hearing in order to prevent the light of day from disclosing the respondent's culpability in unlawfully discriminating against the petitioner, as well as his malpractice in administering a public service.

The respondent's brief to the Supreme Court attempts to defend his position. This present reply by the petitioner is necessitated by the need for the Court to be fully informed on all aspects of this case and accordingly the respondent's writ is answered below:

STATEMENT OF RELEVANT FACTS

Respondent's brief cites two and one half pages of relevant facts to which the petitioner agrees. The Court must also be made aware of other relevant facts which have direct bearing on this case.

1) The petitioner was hired by the college (Greater Hartford Community) in August, 1969 with the clear understanding that he would be promoted to at least Assistant Professor at the end of one year's service. Dean Beckley, the hirer, said later that it was the decision of President Arthur Banks to not promote and there was nothing that Beckley could do about it.

2) The petitioner had previous teaching experience at Catholic University of America in Washington, D.C. and at the University of Detroit, as well as part time teaching experience, plus a dozen years experience as a consulting engineer in industry. There are very few teachers in the Connecticut Community College system who have had prior experience teaching at two major universities. The petitioner gave up a high-paying career to do what he loved - teaching.

3) Dean Beckley agreed that the petitioner had well served his time as an instructor. Banks however, refused to recommend the petitioner for promotion until 1977 for his own spiteful reasons and the petitioner has not been promoted since that time. In the meantime, younger, less capable and even incompetent persons have received regular promotions.

4) Banks is a highly egotistical man and he despised intelligence in his subordinates. The petitioner is not ashamed of his intelligence but is rather proud to admit that he has been a member of MENSA for many years and a contributor to its publications. Banks was more of a dictator than a president and more of a politician than an academician. He could not accept reasonable arguments but overwhelmed his opponents by his sheer size and weight.

5) Banks was somewhat aloof. The petitioner had not met Banks until several months after being hired when the first faculty meeting was held. Banks walked into the meeting smoking cigar and commanded attention. In those early days smoking was permitted in faculty meetings. The petitioner was somewhat active in the American Lung Association at that

time and was a strong advocate of no smoking in the school. He and Banks frequently clashed on the smoking issue and as a consequence was not promoted until 1977 and has not been promoted since.

6) Banks frequently boasted that he was not interested in teaching students how to earn a living, but that he was interested in teaching them how to use politics for their immediate gains. He gave only lip service to his publicized dream of "quality education".

7) Banks unfairly denied the petitioner an earned semester's sabbatical leave with pay in 1981. Yet Banks granted himself a full year's sabbatical leave with pay on his retirement and improperly thereby increased his large pension by an additional $6,000 per year with the acquiescence of the respondent. He also improperly had the school library named after himself although it is doubtful if he even visited the library more than twice.

8) In the Connecticut Community College system there is no provision for testing the continuing competency of teachers as there is in the elementary and secondary school systems. Promotion committee members are chosen by popular vote and do not necessarily represent the older segments of the faculties. The petitioner is by far the oldest person in the employ of the college yet the most under-ranked and the most under-paid.

9) For many years the petitioner has kept a sign on his office door informing the world that "Algebra is spoken here" and welcomes any and all visitors at all times. He has taught all the mathematics presently given at his college and is instantly prepared to answer any question on a problem relating to those subjects. He has written computer programs and used them in class for illustration purposes for about ten years while other teachers are only now beginning to do so. He is the only member of the mathematics department to have presented a paper on mathematics before a national audience of experts. His numerous contributions to the college and his service to his community of South Glastonbury, CT well qualify him for full professorship.

10) Considerable evidence exists that the respondent has committed serious disservice to individuals, the communities,

and the state while at the same time discriminating against the petitioner (the appendices included herein listed as Appendix I through Appendix IV illustrate this).

11) For many years the petitioner has campaigned vigorously for competency testing for the teachers in the Connecticut Community College system. Both the administration and the union oppose such needed reform. The Community colleges are a state-funded extension of the elementary and secondary school systems, which long have had periodic testing of its teachers under state statutes. Much of the blame for the poor quality of this nation's graduates must be placed on poor teaching (see Appendix V), both in the lower grades and in the colleges. The petitioner is the oldest, most capable mathematician in his department yet the most unappreciated.

ARGUMENT

I. THERE IS NO PRECEDENT IN AMERICAN JURISPRUDENCE APPLICABLE TO RES JUDICATA WHEREIN A LITIGANT'S ATTORNEY, DURING THE INTERVALS OF COURT ACTIONS, FAILED IN HIS DUTIES, FAILED TO MAINTAIN PROPER RECORDS, AND FAILED TO COMMUNICATE WITH HIS CLIENT AND SUBSEQUENTLY WAS DISBARRED FOR MALPRACTICE.

The petitioner cannot be held liable for failings of his counsel when said counsel was authorized to practice law in service to the general public by the Courts. Since this case has not been heard before, in any Court, it constitutes an original action and as such, Rule 17 as well as certiorari applies in the present case. The present case therefore must be heard in the Supreme Court under Rule 17 or must be remanded to a lower Court for a hearing.

It is unfair and improper of the respondent to imply that the petitioner has failed to exercise "due diligence" in his pursuit of justice stemming from the discriminatory actions of the respondent and the incompetence of a duly authorized attorney.

The respondent's brief fails to address this particular issue and therefore it must be presumed that he is in agreement.

II. NEITHER THE DISTRICT COURT NOR THE APPEALS COURT PROPERLY AFFIRMED SUMMARY JUDGMENT ON THE GROUND OF THE STATUTE OF LIMITATIONS.

The respondent admits that "In the instant case, the alleged denial of a promotion to the petitioner was unquestionably a discrete and complete act. The acts complained of by the petitioner were complete, distinct occurrences." Indeed, the said denials of promotion were discrete acts, repeated every year and constituted a continuing policy originate by President Banks and continued by the respondent after Banks' retirement. Any one of said acts is sufficient to prove the petitioner's claim of discrimination and

hence the respondent cannot assert that a statute of limitations on some act five years ago negates some action of the present time when the overt act occurred only in the past spring.

The damage done to the petitioner, to the students at Greater Hartford Community College, to the taxpayers of Connecticut and to the nation as a whole must be examined by this Court openly or before a fair and impartial jury in a lower court.

III. THE COURT OF APPEALS' AFFIRMANCE OF THE SUMMARY JUDGMENT UNQUESTIONABLY VIOLATES THE PETITIONER'S RIGHT TO A JURY TRIAL.

The Appeals Court failed to give the petitioner's writs the proper consideration due them. Considerable evidence exists which shows that cases similar to the present are subjected to "increasingly conservative judges who are bored by, if not downright hostile to, such cases." The quotation is taken directly from a front page article in the New York Times, July 24, 1991. (See Appendix VI).

The petitioner has been slandered and defamed by employees of the respondent who refuses to recognize his responsibility. In addition the respondent has willfully violated Federal statutes by repeated acts of discrimination against the petitioner. The petitioner is 70 years old and approaching retirement, while the respondent has effectively condemned him to a future lifetime of shame and poverty, without so much as a single fair and open hearing.

The above is equivalent to sentencing a person on false charges without even permitting him a single open trial to which he is unquestionably entitled by the CONSTITUTION. The cases cited by the respondent are completely irrelevant to the present case and by no stretch of one's imagination can they be made relevant.

Due to the repeated discriminatory acts of the respondent against the petitioner, the petitioner is presently deprived of at least $20,000 per year income to which he is entitled and must bear the ignominious title of Assistant

Professor, while incompetent persons more than 20 years his junior have been Full Professors for many years.

For all the reasons described above, this Court should grant the petitioner his request for a fair hearing or a writ of certiorari.

CONCLUSION

For the foregoing reasons, and for the reasons explained in the PETITION FOR WRIT OF CERTIORARI, the plaintiff-petitioner prays that the judgment of the United States Supreme Court be to grant the writ of certiorari and to thereby permit the plaintiff his right to a judicial or jury hearing to which he has heretofore been improperly denied.

RESPECTFULLY SUBMITTED,

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September 30, 1991

APPENDIX TO PETITIONER'S REPLY BRIEF

APPENDIX I

Article from the Hartford Courant, May 29, 1991

COLLEGE SYSTEM BUNGLES HANDLING OF FULBRIGHT SCHOLAR

Maybe they could draw in all that vast expertise at the Hartford State Technical College for a simple tightening-up chore. In the matter of the handling of Professor Don D. Wilson, someone's got a few screws loose.

Actually, considering the mess the system is making of this respected scholar and the great honor he has brought to the state's technical college galaxy, it might simply be too big a job even for the specialists.

Wilson is Hartford State's first-ever, its only ever, Fulbright scholar, in fact it is believed he is the only person in the state's two-year, community and technical college system to be so recognized. Fulbright scholars are selected for the richness of their accomplishments and promise. Tip your hat to him.

...Here's a guy, 60 years old, who's plugged away at this college for more than a decade and who wins one of the most prestigious recognitions his world has to offer. It's a once-in-a-lifetime kind of thing, and its been muddied up over a few dollars. How many? The system says $9,000. Wilson figures that they could shift things around for the semester at a cost of only $2,800. There is even a calculation that shows they could save money by his being gone..."

APPENDIX II

Editorial from the Hartford Courant by Burton Levine

A COLLEGE GIVES A MERIT AWARD DESPITE AN ETHICS VIOLATION

"...I had noticed that some department heads had hired their spouses for some of this part-time work. Such nepotism is discouraged by many schools and organizations. The state's ethics code bans it unless the department chairman receives a waiver from a supervisor.

Concerned that those of us without a spouse might not be getting a fair hearing in the hiring process, I questioned the State Ethics Commission about the practice. Perhaps others did as well, because this past January two department heads were fined $300 by the ethics commission for hiring their spouses.

Then this June, only four months after the decision, the State Board of Trustees for Regional Community-Technical Colleges gave a $1,500 merit award to one of the two fined department heads...

Is it any wonder that after seeing this bureaucratic legerdemain people outside the government wonder whether their money is being wasted?"

APPENDIX III

Article from the Hartford Courant, Sept. 6, 1991
by Katherine Parisih, Courant staff writer

IN LEAN TIMES, COLLEGES GIVE OUT MERIT BONUSES

"When the bookkeepers finished tallying the budget for the state's community and technical colleges last fiscal year, officials found about $37,000 left over.

If they didn't spend the balance, they knew the money would revert in the state's general fund.

So the Board of Trustees voted in May to distribute the surplus in merit bonuses, for "noteworthy service" to 20 management employees. The bonuses which averaged $1,879, were awarded at a time when many college employees - including faculty members - received notices that they would be laid off because the system's budget for the 1991-92 fiscal year called for the elimination of 188 positions.

Some of the layoffs, including all those of faculty members, have since been rescinded, said Mary Anne Cox. a spokeswoman for the college system.

...State legislators were stunned Thursday to learn that bonuses were paid in a year of fiscal crisis, when the 1990-91 general fund deficit was $966 million.

...Marc Herzog, deputy director. A merit increase of $2,492 raised his salary to $85,556. One time bonus: $3,422.

...Jackson W. Foley, Jr., director of employee relations. A merit increase of $2,453 raised his salary to $84,210. One time bonus: $3,368,

...Gail Dunnrowicz, associate dean at Manchester Community College. Her merit increase of $1,300 raised her salary to $63,551. One-time bonus of $1,312."...

APPENDIX IV

Editorial from the Hartford Courant, Sept. 11, 1991

SHAMELESS ADMINISTRATORS AT THESE COLLEGES

Have the administrators of Connecticut's community colleges and technical colleges no sense of discretion? In this year of fiscal misery, the managers at these colleges decided it would be all right to take $37,000 left over in their budget from the previous year and spend it on bonuses.

The bonuses averaged $1,879 each, but not to teachers - only to administrators, some of whom received cost-of-living and merit raises as well.

...Many sacrifices were made in the community and technical colleges this year, though none that we know of by the people who run them. For example, Don D. Wilson, a professor at Hartford State Technical College was unable to accept a Fulbright Scholarship because the system supposedly had no money. The Board of Trustees denied him full pay for a leave of absence...

...If there is any honor among the administrators who fattened their paychecks, they will take at least a portion of their dubious windfalls and pay Professor Wilson's way to Yugoslavia. Which one of the plutocrats wants to make the call to the Fulbright people?

APPENDIX V

Article from the Hartford Courant, Sept. 16, 1991

TEACHERS ARE TO BLAME FOR POOR MATH AND SCIENCE SKILLS, STUDY FINDS

Associated Press - Washington - If students are dummies at science and math, don't blame the kids, a panel of scientists and educators says. Odds are, their teachers aren't qualified.

More than two thirds of elementary school science teachers lack adequate preparation in science and more than 80 percent of math instructors are deficient in mathematics, according to a report issued by the Carnegie Commission on Science, Technology and Government.

...The commission reached its conclusions on teacher preparation by reviewing material previously compiled by the Federal Coordinating Council for Science, Engineering and Technology.

...Although education is mostly a state and local responsibility, Branscomb said, the Federal government should "play a leading, rather than a cheerleading role" in improving science and math education...

...Under the commission's plan, the National Science Foundation would improve universities' education of math and science teachers...

APPENDIX VI

Article from the New York Times, July 24, 1991
by Steven A. Holmes

WORKERS FIND IT TOUGH GOING FILING LAWSUITS OVER JOB BIAS

...As the nation wrestles intellectually and politically with the issue of civil rights, the legal system appears to be growing increasingly inhospitable toward individual race and sex discrimination cases. Lawyers more and more are turning away such cases, say experts in employment law and lawyers representing plaintiffs and employers.

They say the cases are time-consuming, difficult to win and bring far less money than other civil litigation like personal-injury suits, which permit punitive damages.

Lawyers themselves say, moreover, that they face increasingly conservative judges who are bored by, if not downright hostile to, such cases.

While much of the evidence is anecdotal, a survey conducted in May by the National Employment Lawyers Association, a group made up of about 1,000 lawyers for plaintiffs, found that 44 percent of its members rejected more than 90 percent of the job-discrimination cases that have been brought to them...

...Most often, experts say, those who seek to bring such cases simply abandon the thought of getting any redress in the Federal Courts.

"What happens is that they end up not being able to enforce their rights," said Lex Larson, president of Employment Law Research, a North Carolina concern that publishes manuals on labor law. They go out and find another job, and forget the whole thing."...

..."You don't have the big easy class-action cases you had in the 1970's and 1980's, where you could get a big dollar settlement and attorney's fees over relatively simple issues," said Lawrence Z. Lorber, a Washington lawyer who represents large corporations. "Now, there are testing cases where you

need experts and a lot of up-front money. It's an arena where the targets are fewer, the issues more complex and the litigation takes longer, because the courts are jammed."